

## **Topsfield Zoning Board of Appeals**

November 23, 2010

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Jody Clineff, Scott Dow and David Moniz. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

**Visitors:** Selectmen Martha Morrison and Richard Gandt; Attorney Jackie Slaga, Foti Qirjazi, Attorney Daniel Butler.

**124 River Road:** Chairman Moriarty noted that a public hearing had been scheduled for this time to consider the application submitted by T-Mobile Northeast LLC pursuant to Article XII, Section 12.02A requesting (1.) a special permit subject to Article V and site plan review; and (2.) a variance to the dimensional requirement to allow the installation of a major wireless communications facility with a 100' monopole and related equipment in a fenced compound on premises located at 124 River Road, commonly known as Trinity Episcopal Church. The hearing was not opened due to the mutual agreement of the Board and the Applicant's representative Attorney Jackie Slaga since Member Kristin Palace was absent and the Board needed a consultant in place to review the application.

Ms. Slaga noted that T-Mobile would be fine with the entering into a Chapter 44 Section 53G consultant agreement in the proposed amount of \$3,500 and that she has worked on other cell siting projects with David Maxson whose services the Board intends to use for the technical peer review of the application. Ms. Slaga informed the Board that T-Mobile intends to perform a visibility test at the site on a Saturday prior to the opening of the public hearing.. She would coordinate the scheduling and notification process with Ms. Knight.

The public hearing date was postponed to Wednesday January 5, 2011. Ms. Knight would coordinate location if the Library conference room was not available.

**Minutes:** Chairman Moriarty made the motion to approve the minutes of September 28, 2010 as written; seconded by Member Scott Dow; so voted 3-0-0.

**53 Main Street:** At 8:45PM, Chairman Moriarty opened the public hearing to consider the application of Foti Qirjazi, Trustee of the 53 Main Street Realty Trust, for premises located at 53 Main Street requesting (1.) a finding pursuant to Article III, Section 3.05 of the Zoning By-Law to permit the alteration of a non-conforming building for construction of a second floor apartment over restaurant for a dormer roofline alteration; (2) a variance from the required setback pursuant to Article IV, Section 4.07 and (3.) a special permit pursuant to Article IV, Section 4.12B to reduce the required on-site parking requirement.

At this time Attorney Daniel Butler representing the Applicant noted that Mr. Qirjazi has run an efficient operation since the restaurant opened in 2007. He has been a good neighbor. There have been neither parking problems nor accidents at the site. He has made a large financial investment in the property and needs to utilize all the property.

The members then reviewed the plans as submitted in the application and modifications submitted by the Applicant at the hearing. Chairman Moriarty noted that the original proposal before the Board did not include living space. The addition of a second egress for the proposed second floor apartment would encroach on the abutting property line. Further, the addition of a residential use would require two additional parking spaces and structural changes to a building which he considered too large for the site making the building more unattractive as well as increasing the encroachment on the site.

Member Scott Dow noted that the property currently has a very intensive use with both the restaurant and dry cleaner located on the site. He further noted that the windows for the restaurant were not in compliance with the plans as approved by the Board.

Mr. Foti responded that the original plans for the building did include an apartment on the second floor; however due to the Board of Health's ruling relative to the capacity of the septic system at that time, the apartment had to be eliminated. Now with the new septic classification under the fast food category, there is extra capacity for an apartment which would be used by family members.

Chairman Moriarty responded that an apartment would increase the intensive use of the property; not an appropriate use of the second floor, and would increase traffic and parking requirements in use for the two buildings.

At this time, Attorney Butler made the request that the Board approve the withdrawal of the application without prejudice.

Chairman Moriarty moved that the Board approve the request by Attorney Daniel Butler, the Applicant's representative, to withdraw said application without prejudice. The motion was seconded by Member Scott Dow; so voted; 4-0

The meeting was adjourned at 9:17 PM

Respectively submitted,

Roberta M. Knight  
Community Development Coordinator